



U.S. DEPARTMENT of STATE

South Africa

Country Reports on Human Rights Practices - [2004](#)

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South Africa is a multiparty parliamentary democracy in which constitutional power is shared between the President and the Parliament. President Thabo Mbeki led the African National Congress (ANC) party, which increased its seats to 279 in the 400 seat National Assembly after a free and fair national election in April. Parliament, in turn, elected the President. The Government included ministers and deputy ministers from the Azanian People's Organization (AZAPO) and the New National Party (NNP), but was dominated by the ANC. The judiciary, including the Constitutional Court, was independent but overburdened.

The South African Police Service (SAPS), which is overseen by the Department of Safety and Security, has primary responsibility for internal security, and the South African National Defense Force (SANDF), which is overseen by the Department of Defense, is responsible for external security but also has domestic security responsibilities. The SANDF and the SAPS border control and policing unit shared responsibility for border control. The Government continued to train and organize the Directorate of Special Operations, dubbed the Scorpions, to coordinate efforts against organized crime and corruption. The civilian authorities maintained effective control of the security forces. Members of the security forces committed serious human rights abuses.

The country has a market based economy. According to mid-year population estimates by Statistics South Africa, the country had a population of approximately 46.6 million. The manufacturing and services (including government) sectors, accounted for approximately 20 percent of the gross domestic product, while the agricultural and mining sectors each represented approximately 4 percent. The economy grew at a rate of 1.9 percent in 2003. Average monthly wages rose by 8.5 percent while the average consumer inflation rate in 2003 was 6.2 percent. The distribution of income and wealth remained highly skewed along racial lines and between urban and rural citizens. Approximately 60 percent of the black African population and approximately 3 percent of the white population lived below the poverty line. Official unemployment remained high at 27.8 percent.

The Government generally respected the human rights of its citizens; however, there were serious problems in several areas. Deaths due to the use of excessive force by security forces and deaths in police custody were serious problems. Some members of the police beat, raped, tortured, and otherwise abused suspects and detainees. The Government took action to investigate and punish some of those involved. Prisons were severely overcrowded, and some prison employees and other prisoners abused and assaulted prisoners physically and sexually. The judiciary was overburdened, and lengthy delays in trials and prolonged pretrial detention were problems. Xenophobia continued to be a problem. Violence against women and children remained serious problems, and discrimination against women and persons with disabilities also remained problems. Child labor, including forced child labor, was a problem. Child prostitution and trafficking in persons were serious problems. Vigilante violence and mob justice continued throughout the country.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no politically motivated killings by the Government or its agents; however, police use of lethal force during apprehensions resulted in a significant number of deaths, and deaths in police custody were a problem. The Government investigated and punished some abusers and worked to prevent future abuses.

For example, on January 4, two Witdraai police officers, Inspector Johannes Liebenberg and Constable Wayne van Wyk, allegedly shot and killed a Khomani San civilian who was trying to break into a house (see Section 5). The Government's Independent Complaints Directorate (ICD) investigated the case and forwarded it to the Director of Public Prosecution (DPP) who began prosecuting the officers for murder. On January 13, SAPS members allegedly shot and killed a civilian who was fleeing the scene of a crime. The ICD investigated the case and forwarded it to the DPP who ordered that a formal inquest be held.

The ICD investigated deaths in police custody and deaths as a result of police action, and continued to improve their cooperation with the SAPS. According to the ICD, there were 380 deaths as a result of police action. Between April 1, 2003 and March 31, there were 334 deaths in police custody that resulted from a variety of causes, including natural causes.

In October, SAPS members Superintendent Buitendag, Inspector Austin, and Inspector Pansegrouw were acquitted due to insufficient evidence on charges related to the 2002 torture and killing of Inspector Leonard Hlagala.

There were reports of deaths resulting from political violence between ANC and Inkatha Freedom Party (IFP) supporters in KwaZulu-Natal in the run-up to the April 14 national and provincial elections. Press reports estimated that there were at least 10 and perhaps as many as 30 politically related deaths between late 2003 and the April election, compared with 325 political fatalities during the 1999 election, of which 190 were in KwaZulu-Natal. The media also quoted KwaZulu-Natal Premier S'bu Ndebele as saying the killing of Kasavelin Stanley Chetty, an Esourt councilor, was "politically motivated." According to press reports, the killing was preceded by a series of death threats to councilors who defected to the ANC.

Unlike in the previous year, there were no reports of politically motivated killings between the United Democratic Movement and the ANC in Western Cape.

Fear and the threat of violence still existed in the rural areas. Violence in the province was mainly taxi-related but had political overtones as the process to transform and formalize the IFP-dominated taxi industry continued. Approximately 12 taxi owners and 16 passengers were killed in KwaZulu-Natal taxi-related shootings since November 2003. On December 4, unknown assailants opened fire and injured 18 members of a taxi association. Other forms of violence such as faction fighting remained higher than in other provinces.

The trial of 22 right wing Afrikaners charged with murder, high treason, terrorism, and sabotage in the 2002 Soweto bombings was ongoing at year's end.

The appeal of right wing Afrikaners Leon Peacock, Hercules Viljoen, and Alan Rautenbach, who plotted to blow up the Vaal Dam in 2001 and were convicted of sabotage had not been heard by year's end.

Episodes of vigilante action and mob justice were reported. While exact figures were not available, vigilante attacks were particularly prevalent in Gauteng, the Western Cape, and KwaZulu Natal. On May 22, approximately 500 residents in Gauteng attacked two men accused of murders in the area and killed them by "necklacing" (placing tires around their necks and setting them on fire). On June 22, a man killed in the same manner was found on a farm in Gauteng. On August 1, a group in the Eastern Cape necklaced and killed three men accused of raping a young girl.

The trial against 14 individuals accused of hacking to death 7 persons in 2002 was on going at year's end. Twelve persons were charged with the deaths of Adam Potgieter and Samuel Moletsane in December 2002 and the trial was scheduled to begin in 2005.

A vigilante group called Mapogo A Mathamaga continued to grow in membership and reportedly had more than 90 branches and 50,000 members throughout the country, including offices in at least 9 cities. Mapogo targeted persons they suspected of property crimes against their members, tortured suspected criminals, and beat persons with clubs and whips. The group operated under several other names, such as Mapogo Crime Stop, making their activities difficult to regulate.

In 2002, Bertrams Pringle, Willie Skhosana, and Mapogo member Robert Van der Colff were charged with murder for beating Adam Potgieter and Samuel Moletsane to death for allegedly stealing construction equipment. The trial was postponed to February 2005.

Numerous court cases involving People Against Gangsterism and Drugs (PAGAD), an anti-crime group with an anti-government bias, continued throughout the year. At the start of the year, prosecutors reported there were 55 PAGAD-related cases or appeals still awaiting trial. Judicial proceedings against a number of PAGAD members, including Abubakar Jacobs, Ebbrahim Jeneker, Mogamat Issacs, Faizel Samsodien were not concluded at year's end. PAGAD leader Salie Abader's suit against authorities for "wrongful arrest and malicious prosecution" following his acquittal in 2002 for a killing had also not concluded by year's end.

On October 18, the Cape High Court imposed two life sentences on PAGAD member Mogamat Phadiel Orrie, who was charged with the murder of Cape Town couple Yusuf and Fahiema Enous in a state Witness Protection Program safe-house in December 2000.

PAGAD leader Abdus-Salaam Ebrahim remained in jail, charged with participating in the 1996 murder of a Cape Town gang leader. Members of the armed wing of PAGAD, the so-called G-force, such as Mansoer Legget, Ebrahim Jeneker, and Abdullah Maansdorp, were all serving multiple life sentences. In May, the trial of PAGAD member Shaheem "Doc" Ismail resumed for the attempted killing of a Cape Town judge. Also in May, PAGAD gunman Faizel "Bunnylick" Samsodien received a 25-year jail sentence for a 1999 shooting of members of a rugby team. A third trial began in late May of five PAGAD members from Delft for three killings in 1999.

There continued to be reports that xenophobia led to a number of violent attacks on foreigners (see Section 5). From December 24 to 26, a number of attacks on Somali refugees took place in the Western Cape, Eastern Cape and Gauteng. Seven Somali nationals were killed during these incidents, one in Khayelitsha, three near George, one in Johannesburg and one in Port Elizabeth. At year's end, police were investigating the cases, but no arrests were made. In September 2003, Catholic social workers in Cape Town claimed that xenophobia was a major contributing factor in the deaths of as many as 28 refugees during the previous 18 month period. There were no developments by year's end in the case of three Angolans and one citizen killed in January 2002 in clashes between locals and refugees in the Joe Slovo area in Milnerton, a Cape Town suburb.

Killings and other violent crimes against farmers and on some occasions members of their families continued in rural parts of the country. There was widespread concern among white farmers that they were targeted for racial and political reasons; however, according to police and academic studies of farm attacks, the perpetrators reportedly were common criminals motivated by financial gain. It also was reported that in the majority of cases, the perpetrators were not farm workers. According to Agriculture South Africa (AgriSA), 838 farm attacks and 75 farm killings took place in 2003 and 652 farm attacks and 86 farm killings took place by the end of October. The Independent Committee on Motives for Farm Attacks' report was released in September 2003 and found the perpetrators in the great majority of cases appeared to be common criminals motivated by financial gain. Security forces continued to be viewed as responding to attacks, rather than preventing them.

On February 18, farm owner Mark Scott Crossley and farm workers Richard Mathebula and Simon Mathebula were charged with murder after the remains of Nelson Chisale--a former farm laborer--were found in a lion camp. The three allegedly beat the former employee and tossed him into an enclosure at a breeding project for rare white lions. The three were denied bail and the case was postponed until January 2005. The case against a fourth man, Richard Mnisi, was withdrawn when he became a state witness.

On June 21, a white employer, Jewell Crossberg, shot and killed a farm worker (and Zimbabwean national), Jelous Dube, in Musina. Crossberg told police he had mistaken his victim for a baboon, but farmworkers who witnessed the shooting said the killing was triggered by the victim's failure to report to work the day before. Crossberg was arrested but released on bail of \$1,230 (R8,000). Some expressed concern about the manner in which the bail application was handled, saying that it was "very unusual" that a culprit could be taken straight to the court without first being sent to a police cell.

On February 17, the High Court in Nelspruit found Gerrit Maritz, a white employer, guilty of the February 2003 killing of farm worker Jotham Mandlaki for failing to show up for work and sentenced him to 2 years in prison or a fine of \$5,538 (R36,000). Several human rights groups expressed shock at the lightness of the sentence.

In Limpopo Province, where traditional beliefs regarding witchcraft remained strong, there were occasional reports of attacks on persons accused of witchcraft by their rural communities (see Section 1.f.). Traditional leaders cooperated with Ministry of Safety and Security programs and reported threats against persons suspected of witchcraft to the police. The press reported that on November 9 two men killed four elderly women accused of witchcraft in Nontshinga Village in the Eastern Cape. One of the suspects wanted in connection with the murders was shot and killed by police after attacking a police officer and the second suspect remained under arrest at year's end. Some of the suspects accused of the February 2003 killing of a man suspected of involvement in witchcraft in KwaZulu Natal remained in custody at year's end and the trial was scheduled to begin in February 2005.

Muti killings--killing, especially of children, to obtain body parts for traditional healing--continued during the year. On July 30, attackers hacked off a young boy's hand, ear, and genitals. The boy died 10 days later. SAPS estimated that there were an average of 150 to 300 such killings each year.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution's Bill of Rights prohibits such practices; however, some police officers beat, raped, tortured, and otherwise abused suspects. Some incidents of torture and ill treatment by police and SANDF members occurred during interrogation, arrest, detention, and searches of persons' homes.

In 2002, a SAPS member allegedly assaulted a pregnant woman and solicited a bribe to stop the case against her minor son, whom he was investigating. The ICD investigated charges of assault with intent to do grievous bodily harm; however, the Director of Public Prosecutions declined to prosecute the case.

During the year, the police officer who set a dog on Titus Mahlatse in July 2003 was acquitted on the basis that the victim gave contradictory statements.

Incidents of police harassment against foreigners continued, particularly during coordinated police raids of areas where foreign nationals resided. Some state hospitals reportedly routinely refused emergency treatment to indigent foreigners, despite

regulations that required such treatment.

The press reported that many refugee seekers claimed they were whipped, beaten and subjected to other brutal treatment at the hands of immigration personnel. The Director of South Africa's Home Affairs Department promised to investigate these allegations; however, no investigation had begun by year's end. Four South African soldiers who were arrested in August at Madimbo military base near Beitbridge on allegations of ambushing, stripping, raping, and robbing illegal Zimbabwean immigrants. They subsequently appeared in court facing various charges.

There were reports that police abused homosexuals (see Section 5).

In July, there were reports that SANDF troops, stationed in the Democratic Republic of the Congo (DRC) as part of the U.N. peacekeeping mission, raped young girls. An independent U.N. investigation team from the Office of Internal and Oversight Services was sent to investigate allegations of widespread sexual abuse of children by peacekeeping soldiers from various countries. A SANDF colonel was sent home after he was accused of molesting his young male interpreter; however, the colonel was not investigated or prosecuted after his return to South Africa.

Vigilante action and mob justice resulted in attacks on suspected criminals, some of whom were killed (see Section 1.a.).

There were incidents in which white employers abused their black African farm laborers. Nongovernmental organizations (NGOs) claimed that rural police and courts refused to arrest or prosecute whites in many cases.

Most prisons did not meet international standards, and prison conditions did not always meet the country's minimum legal requirements. Severe overcrowding in some prisons led to poor health; as many as 75 inmates may occupy a cell designed to hold 40 inmates. The Department of Correctional Services (DCS), which manages prisons, reported in its 2003-04 annual report that there were 240 prisons in the country with a total capacity of approximately 114,787. There were 184,576 prisoners in custody of whom 53,876 were awaiting sentences, putting overcrowding at 63 percent. This overcrowding was especially visible among prisons for juveniles. For example, a 332 percent occupation rate was reached in the juvenile section of the Durban prison; however, the Government began building new prisons during the year.

The natural death cases in the country's prisons, primarily due to HIV/AIDS, increased sharply over the past few years and continued to grow.

Prison employees and other prisoners abused and assaulted prisoners physically and sexually. There were reports that some detainees awaiting trial contracted HIV/AIDS through rape. According to the Institute for Security Studies (ISS), some of the inmates intentionally infected other inmates with HIV/AIDS in a process called "slow poison" to control or punish them. Approximately 42 percent of all prisoners were living with HIV/AIDS. In 2003, the DCS identified health as a priority; however, health services remained inadequate.

There were reports that prison employees stole food and money from prisoners. According to NGOs, 70 percent or more of prisoners used drugs, provided to them illegally by guards or other persons with access to them. In many of these cases, offending police or correctional officers were suspended or expelled from their services.

The Jali Commission, which the President appointed in 2002, continued to investigate allegations of corruption and sexual abuse in prisons. The Commission began in 2002 and reported finding widespread irregularities involving prisoners leaving the premises illegally, nepotism, drug trafficking, irregular appointments of personnel, and massive medical aid fraud. In 2003, the Commission also highlighted evidence of extortion, abuse of parole procedure, abuse of disciplinary enquiries and appeal procedures, and educational qualifications fraud.

On July 28, the head of Grootvlei Prison, Tatolo Setlai, who allowed prisoners to secretly videotape corrupt activities in the jail in 2002, was acquitted on 20 criminal charges. Of the 22 wardens implicated on footage taken by the prisoners, 19 were dismissed, 1 died of natural causes, and 2 faced disciplinary hearings.

Violence among prisoners, particularly sexual violence, was a serious problem.

Human rights groups raised serious concerns regarding C MAX prisons, which were designed to hold the country's most dangerous criminals, including the Government's criteria for transferring prisoners from other prisons to a C MAX facility and the restrictive, solitary conditions of the prisons.

Problems remained at the Lindela Repatriation Center, the largest detention facility for undocumented immigrants in the country, particularly as a result of the overcrowding of cells. The Department of Home Affairs conducted sweeps of squatter camps and sent illegal immigrants to Lindela to await repatriation. Some of the refugees alleged that Home Affairs employees, Lindela employees, and police requested bribes.

Male and female prisoners were held separately.

Juveniles were sometimes held with adults. There were credible reports that youths held with adults were vulnerable to sexual exploitation, including rape. Pretrial detainees were generally held together with convicted prisoners.

Some immigrant children detained in the Lindela Repatriation Center received the same general treatment as adult detainees and, most were provided with separate sleeping facilities from adults only after October. In contrast to 2003, children were provided with food and clothing. In February, as a result of a court case brought by Lawyers for Human Rights, some children were transferred to Dyamambo Youth Center.

The Government generally permitted independent monitoring of prison conditions, including visits by human rights organizations; however, organizations were sometimes told that only lawyers were able to visit prisoners and some groups were routinely denied access. The Judicial Inspectorate visited all prisons regularly.

d. Arbitrary Arrest or Detention

The Constitution prohibits arbitrary arrest and detention, and the Government generally observed these prohibitions; however, prolonged pretrial detention continued to be a problem.

SAPS is the primary instrument of state policing, with a presence throughout the country. The SAPS, under the Ministry of Safety and Security, continued its major restructuring and transformation from a primarily public order security force to a more accountable, community service oriented police force; however, it remained ill equipped, overworked, and undertrained. According to the 2003-04 SAPS annual report, there were 106,233 police officers and 28,624 civilians working in SAPS, with a shortage of personnel estimated to be 20,000. The majority of police resources remained focused on former white areas and business districts, and police service was unevenly distributed across the provinces, ranging from 313 residents per police officer in the Free State to 669 residents per police officer in Limpopo Province.

SAPS continued to create partnerships between local police forces and the communities they served. Municipalities also maintained metropolitan police forces in major cities under local control, such as in Johannesburg, Durban, Pretoria, and Cape Town; however, SAPS continued to have deficiencies in mid level leadership and institutional memory that were detrimental to its overall performance.

The ICD received 1,473 allegations of criminal offences by police. There were 101 cases of corruption, representing a 3.8 percent decrease from the previous year. There was a 47 percent increase in reports of serious criminal offences allegedly committed by SAPS members and a 27.6 percent increase in incidents of misconduct; most cases were for neglect of duty (86.4 percent). The other cases related to failure or refusal to perform duties and gross discourtesy.

Broad efforts to reform police practices continued, and the ICD investigated reports of police misconduct and corruption; however, the number of reported incidents of abuse increased. The Government made efforts to address abuses with an official anti torture policy and training programs for police and SANDF officers that included human rights.

The Bill of Rights provides that every detained person has the right to be informed promptly of the reasons for their detention; to be advised promptly of the right to remain silent and the consequences of waiving that right; to be charged within 48 hours of arrest; to be detained in conditions of human dignity; to consult with legal counsel at every stage of the legal process; to communicate with relatives, medical practitioners, and religious counselors; and to be released (with or without bail) unless the interests of justice require otherwise. Courts and police generally respected these rights; however, there continued to be a problem with prison conditions and bringing detainees to trial expeditiously.

Human rights groups, judges, and judicial scholars continued to express concern about the Criminal Procedure Second Amendment Act, which mandates minimum jail sentences and prohibits bail in certain cases.

According to ISS, prisoners waited an average of 3 months, but some as long as 2 years, for a trial. At any time during the year, 28,000 persons waited for more than 3 months for a trial. This problem primarily was the result of an understaffed, underfunded, and overburdened judiciary (both magistrates and prosecutors) (see Section 1.e.).

The National Director of Public Prosecution (NDPP) was preparing cases against persons who were denied amnesty, failed to apply for amnesty, or were implicated in human rights abuses during the Truth and Reconciliation Commission (TRC) process. In the first case, charges were brought against Gideon Nieuwoudt, Johannes van Zyl, and Johannes Koole for the Pebco Three killing in 1985 (see Section 4).

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice; however, the judiciary was understaffed, underfunded, and overburdened.

The Constitutional Court is the highest court for interpreting and deciding constitutional issues, while the Supreme Court of Appeal is the highest court for interpreting and deciding other legal matters. The lower courts include Magistrates' Courts,

Divorce Courts, Small Claims Courts, and Courts of Chiefs and Headmen. Magistrates' Courts—including regional and district courts—have civil and criminal jurisdiction. The country also has a range of special courts, including the Labor Appeals Court, Labor Court, Land Claims Court, Special Income Tax Courts, Special (Consumer) Court, and the Electoral Court.

Judges and magistrates hear criminal cases and determine guilt or innocence. There is a presumption of innocence for criminal defendants. The law requires that a panel of lay assessors, along with a magistrate, hear cases involving murder, rape, robbery, indecent assault, and assault leading to serious bodily harm. The two assessors may overrule magistrates on questions of fact. Magistrates also can use assessors in an advisory capacity in bail applications and sentencing.

The Bill of Rights provides for due process, including the right to a fair, public trial within a reasonable time after being charged, and the right to appeal to a higher court. It also gives detainees the right to state funded legal counsel when "substantial injustice would otherwise result"; however, a general lack of information for accused persons regarding their rights to legal representation and the Government's inability to pay for these services were continuing problems.

The Government operated 46 justice centers in the country, composed of the Departments of Justice, Correctional Services, Welfare and Health, and SAPS, to speed up the administration of justice, free up the court rolls, and alleviate overcrowding in prisons. However, serious backlogs in the numbers of cases that have gone to trial remained.

There was public concern regarding the capacity of the criminal justice system to deal with the high level of crime, and instances of vigilante justice reflected this concern (see Section 1.a.).

There were no reports of political prisoners.

The Land Claims Court settled cases previously screened and evaluated by the Commission on Restitution of Land Rights. Claims only could be filed for land disposessions that occurred after the promulgation of the Natives Land Act of 1913. The Commission ceased accepting applications after 1998, but the cases have moved slowly, which caused increasing tension and frustration. At the end of March, 48,825 restitution claims were settled, involving 662,307 beneficiaries. Of this figure, 17,631 claims resulted in the restoration of land. The rest resulted in financial compensation remedies; however, the budget for restitution was inadequate to meet the demands of the restitution program.

On January 28, the President signed into law the Restitution of Land Rights Amendment Bill, which allows the Minister of Agriculture and Land Affairs to "purchase, acquire in any other manner, or expropriate land" to speed up the restitution process. Before land may be expropriated, the Minister is required to give adequate notice of the intention and arrange for fair compensation. The Bill allows landowners recourse through the courts if they feel the compensation amount received is not adequate. There were no expropriations by year's end.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution prohibits such actions; however, there were a few allegations of police abuse and other criticisms against government legislation and practice.

There were a few allegations of police abuses during sweeps and home searches. In July, residents of Salt River in Cape Town claimed that police assaulted them and damaged their homes after allegations that they hid drugs. In August, residents of Woodstock in Cape Town complained about police officials' heavy-handed approach during the confiscation of drugs, ammunition, and cash in a surprise raid.

In 2002, the Regulations of Interception and Provision of the Communication Related Information Bill, which provides for state monitoring of all telecommunications systems for criminal investigations, including cell phones, the Internet, and e mail, was signed into law. However, the Bill had not been implemented by year's end.

The Promotion of Access to Information Act is to assist authorities in obtaining personal information and is used solely in criminal investigations; however, opposition parties and human rights NGOs objected to its broadly defined provision that enabled the Government to access an individual's personal information.

A 2003 South African Human Rights Commission (SAHRC) report indicated that there were reports of farmers illegally evicting farm residents.

There were reports that persons accused of witchcraft were attacked and driven from their villages in rural communities (see Section 1.a.). Some survivors of attacks and their families were living in "witch villages," which had no running water or electricity, for safety in Limpopo Province. Although some persons returned to their homes, many persons remained in the villages and requested government assistance for schools and basic infrastructure, some of which was provided.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press, and the Government generally respected these rights in practice and did not restrict academic freedom; however, these rights can be limited by law in some circumstances. Several apartheid era laws that remained in force posed a potential threat to media independence.

The independent media was active and expressed a wide variety of views; however, some journalists expressed concern that the Government heavily influenced and wanted to control the media.

Print media reached only 20 percent of the population, and most major newspapers experienced a drop in readership during the year. Due to socio-economic and demographic circumstances, the majority of the population received news through radio broadcasts from the government-owned South African Broadcasting Corporation (SABC) and community radio stations.

The SABC continued to own and control the majority of the television and radio outlets. The SABC was managed by black African executives and provided broadcasting in the country's main African languages. SABC offered news coverage of the Government and the leading opposition parties, but the opposition accused it of pandering to the ANC when it gave exclusive and complete coverage to President Mbeki's January 11th speech on the ANC's election manifesto. Further allegations of the ANC's desire to control the SABC were raised when former SABC news editor and ANC stalwart Snuki Zikalala was appointed Managing Director of News and Current Affairs at SABC on April 15.

Low power, not for profit community radio stations continued to play an important role in informing the mostly rural public; however, they often had difficulty producing content and maintaining staff. Government broadcast regulators regularly issued new community radio licenses and also withdrew a few for non-compliance with the terms of issuance. At least two radio stations that were refused, Alex Radio and Radio Pretoria, appealed to the Constitutional Court to overturn the decision. Their cases were pending at year's end.

SABC TV, which broadcast in seven languages, reported on March 11 that 89 percent of all television viewers watched SABC channels at some point during the day. The SABC's three channels together reached 18.1 million viewers.

The only commercial television station, e.tv, reached 37 percent of the total population. Most of e.tv's schedule consisted of newscasts and foreign produced programs. E.tv continued to struggle to provide its mandated 30 percent locally produced content, and sought to have certain aspects of its licensing agreement relaxed. Midi Television, a black owned consortium composed of a number of associations and syndicates representing workers, women, and persons with disabilities, held majority ownership of e.tv. Satellite programming was also available.

There were several government agencies with media related responsibilities, such as the Independent Communications Authority of South Africa (ICASA). The ICASA was not completely independent from the Department of Telecommunications.

High ranking government officials on occasion reacted sharply to media criticism of government programs and problems and at times accused journalists, particularly black African journalists and editors, of disloyalty and white journalists and editors of racism. Some journalists believed that the Government's sensitivity to criticism caused self censorship in the media.

Several laws remained in effect that permitted the Government to restrict the publication of information about the police, the national defense forces, prisons, and mental institutions. While these laws were not used often, journalists perceived them to be a threat to constitutional rights. In July, during a riot in Diepsloot, police invoked an apartheid-era law to restrict the access of the media, stating it was for the journalists' own safety.

The Foreign Publication Board reviewed and judged written and graphic materials published in or imported into the country. The Board had the power to edit or ban books, magazines, movies, and videos, and it regularly exercised that power, mostly regarding pornographic material.

The Government did not restrict access to the Internet.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of assembly and association, and the Government generally respected these rights in practice.

On September 1, a protester was shot and killed in Johannesburg; at year's end, the Government was investigating whether the victim was killed by security forces, a private security firm, or by another demonstrator.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice. Cases of

discrimination against a person on the grounds of religious freedom can be taken to the Constitutional Court.

While there were occasional reports of desecration and vandalism or verbal or written harassment, no violent incidents reported.

For a more detailed discussion, see the [2004 International Religious Freedom Report](#).

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government generally respected them in practice.

The Constitution does not prohibit forced exile; however, there were no reports of forced exile during the year.

The law provides for the granting of asylum and refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol, and the Government has established a system for providing protection to refugees. The law also provides for a broader definition of refugee status to be granted if a person satisfies the definition set forth in the 1969 Organization of African Union's Convention on Governing the Specific Aspects of Refugee Problems in Africa. In practice, the Government provided protection against refoulement, the forcible return of persons to a country where they feared persecution. The Government granted refugee status and asylum. The Immigration Act, which was signed into law in 2002, was amended during the year. These amendments included updating and amending the schedule of countries exempt or not exempt from visas; providing a 14-day non-renewable transit permit for refugees; and changing the powers and composition of the Immigration Advisory Board.

The Government cooperated with the office of the U.N. High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees and asylum seekers. According to incomplete statistics provided by the Department of Home Affairs, the Government received 16,532 new asylum applications during the first 9 months of the year. The majority of recognized refugees came from the DRC, Angola, and Somalia; there also were refugees from Rwanda, Burundi, and the Republic of the Congo.

Lawyers for Human Rights criticized the Department of Home Affairs for not following the provisions of the Immigration Act and the Refugee Act. Applicants for asylum and NGOs assisting refugees reported that immigration authorities requested bribes to process applications for permits to remain in the country. There were reports that police and immigration officials abused refugees and asylum seekers (see Section 1.c.). Lawyers for Human Rights also reported asylum seekers being denied entry and repatriated immediately upon arrival at airports without benefit of formal asylum processing.

On March 9, the Constitutional Court ruled on whether certain provisions of the Immigration Act that allowed immigration officers to declare persons at ports of entry illegal foreigners and have them detained. The Court recognized that persons believed to be illegal foreigners have the right to due process and administrative justice.

Despite numerous procedural safeguards, efforts to combat a growing illegal immigration problem occasionally resulted in the Government wrongfully deporting aliens who were in the country legally. In late 2003, the Government denied entry to a group of Liberian asylum seekers; however, there were no reports of the forced return of persons to countries where they feared persecution during the year.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage. On April 14, the third democratic national election was held. The election was largely peaceful; however, a few incidents of political violence occurred in KwaZulu-Natal in the weeks before the election. The IFP registered a number of complaints with the Independent Electoral Commission including large numbers of special votes, posters being removed or defaced, individuals being threatened because of political affiliation, and other incidents of intimidation. The IFP challenged the legitimacy of the election in KwaZulu-Natal at the Electoral Court; however, they later withdrew its court action and accepted the election results.

Thabo Mbeki was reelected for a second term as President and Head of State. Three parties the ANC, the NNP, and the AZAPO shared executive power. ANC members occupied 26 of the 28 ministerial positions and increased its parliamentary strength in the election, from 266 seats to 279. The official opposition, the Democratic Alliance, increased its seats from 38 to 50. Twelve political parties were represented in Parliament. Both the IFP and the NNP lost support; however, the NNP was represented in government as a result of an earlier agreement with the ANC. On August 6, the NNP announced that it would merge with the ANC but elected representatives would continue to hold their seats in the national and provincial legislatures as NNP members until September 2005.

There continued to be reports of inter party rivalry and violence during the year (see Section 1.a.).

The two houses of Parliament are the National Assembly (NA), with 400 members, and the National Council of Provinces (NCOP), with 90 members. The NCOP, created to give a greater voice to provincial interests, was mandated to approve

legislation that involved shared national and provincial concerns according to a schedule in the Constitution and to concur on other legislation. There was an 18 member Council of Traditional Leaders that the Constitution accords an advisory role in matters of traditional law and authority.

The Government made progress in the fight against corruption; however, there was still a widespread view that corruption was prevalent within the Government, particularly in the police and the Department of Home Affairs. In April, Parliament passed the Prevention and Combating of Corrupt Activities Act, which for the first time defines the scope of corrupt activities, as well as complements several existing anti-corruption laws. Government anti-corruption entities also made significant progress by expanding their operations and working towards greater interagency cooperation.

In July, head of the NDPP Bulelani Ncguka resigned amidst media reports that parliamentarians and their travel agents misused official vouchers to pay for personal expenses. An internal parliamentary investigation starting in 2003 audited the accounts of as many as 179 parliamentarians for misusing up to \$2.5 million (R16 million). The incident became public after 7 travel agents were arrested in connection with the alleged scam, and in August the "Scorpions" unit of the NDPP submitted to Parliament the names of 23 parliamentarians that they wanted to question in connection to the scandal. No politicians had been charged by year's end; however, the investigation remained ongoing.

The Promotion of Access to Information Act of 2000 provides for access to information. The Government generally complied with the Act, but there were problems with implementation. Civil society organizations, such as IDASA and the Open Democracy Advice Center, complained of lack of compliance, based on a study conducted in 2003. More than two-thirds of requests for information went unanswered or were answered outside the period provided for in the legislation. If a government department refuses to provide information, an internal appeal can be launched. If this also fails, the requestor may appeal a decision to the High Court. This is a timely and costly process, and consequently excludes groups or individuals who cannot afford the process. Results of the study also indicated a bias against journalists of newspapers perceived to be critical of the Government. In November 2003, IDASA launched a court case against four political parties under the Promotion of Access to Information Act to disclose the private sources of funding.

The Government and ANC promoted women's participation in government. There were 131 women in the 400 seat NA, and 21 women among the 54 permanent delegates of the NCOP. Women occupied three of four parliamentary presiding officer positions (speaker and deputy speaker of the NA, and chair of the NCOP). Women held 12 of 28 ministerial positions, as well as 10 of 21 deputy ministerial slots.

There were approximately 140 members of minorities, i.e. non-black Africans in the NA. There were 6 members of minorities in the cabinet.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and responsive to their views. Many organizations participated in governmental bodies that gathered public input and tried to fashion policies related to human rights.

The UNHCR and the National Consortium on Refugee Affairs continued their "Roll Back Xenophobia" campaign to raise public awareness of the situation and rights of refugees and the difference between refugees and economic migrants. The campaign entered its second phase, focusing on a more holistic approach towards ending xenophobia through partnerships with the Department of Home Affairs, SAPS, and the South African Council of Churches.

The government created SAHRC was responsible for promoting the observance of fundamental human rights at all levels of Government and throughout the general population. The SAHRC also has the power to conduct investigations, issue subpoenas, and hear testimony under oath. On June 23, the SAHRC launched the fifth Economic and Social Rights Report, which reviewed the Government's performance in promoting housing, food, water, social security, education, land, environment, and health rights. The SAHRC also focused on a variety of other human rights problems, including racism, freedom of expression, person with disabilities, refugees, and prisoners.

The Office of the Public Protector investigated abuse and mismanagement by the Government, and acted as an office of last resort to which citizens reported unfair treatment by government entities. Such complaints generally took the form of concerns over lost pension checks or unfair hiring practices. The office handled an increasing number of complaints but was hampered by severe resource constraints.

The TRC, created to investigate apartheid era human rights abuses, made recommendations for reparations for victims, and granted amnesty in return for full disclosure of politically motivated crimes. The TRC concluded its activities at the end of 2001 and released its final report in March 2003. In April 2003, the President announced a one time payment of \$4,600 (R30,000) to 18,000 apartheid victims approved by the TRC. At the end of October, more than 16,000 victims already received payments; however, 1,800 had not been paid due to incorrect banking and other details. The Khulumani Victims Support Group continued to lobby the Government for additional reparations.

During the year, the first TRC-related case since the 1990s was prosecuted by the National Prosecuting Authority (NPA). Former security agents Gideon Nieuwoudt, Johannes "Slang" (Snake) van Zyl, and Johannes Koole were charged with three counts of kidnapping, murder, and assault to do grievous bodily harm, in connection with the 1985 killings of the "Pebco Three," Qaquwili Godolozzi, Champion Galela, and Sipho Hashe. The TRC denied amnesty to Nieuwoudt, Van Zyl, Herman Barend du Plessis, and Gerhardus Johannes Lotz for failure to make a full disclosure. They were arrested and released on bail during the year. The case was postponed to April 2005, pending the review proceedings of the amnesty re-hearing case, also involving Nieuwoudt.

Gideon Nieuwoudt, former security police intelligence unit head in the Eastern Cape in the 1980s, also re-applied for amnesty along with two former colleagues, Wybrand du Toit and Marthinus Ras, for the so-called Motherwell killings in 1989. They admitted to killing Warrant Officer Glen Mgoduka, Sergeant Amos Faku, Sergeant Desmond Mpipa, and Xolile Sakati, were convicted in criminal court for the murders, and were refused amnesty after an initial hearing in 1997. In a civil case in 2001, the Cape High Court ordered their application to be heard again by a new panel and their amnesty hearing began on March 22. Closing arguments were heard on September 28 and 29, and the applicants were awaiting a decision from the amnesty committee at year's end.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The Constitution prohibits discrimination on the grounds of race, disability, ethnic or social origin, color, age, culture, language, sex, pregnancy, sexual orientation, or marital status; however, entrenched attitudes and practices, as well as limited resources, restricted the practical effect of these protections in some cases. The Promotion of Equality and Prevention of Unfair Discrimination Act places a responsibility on the State and any person in the public domain to promote equality. The Act addresses discrimination in a broad context in the workplace, health care, education, services, pensions, and other socio economic areas.

Women

There was a high rate of domestic violence, including physical, sexual, emotional, and verbal abuse, as well as harassment and stalking of former partners. The law defines victims of domestic violence, facilitates the serving of protection orders on abusers, requires the police to take victims to a place of safety, and allows police to seize firearms at the scene and arrest abusers without a warrant. The law extends legal protection from domestic abuse to persons who are not in legal or common law marriages. Violating a protection order is punishable by a prison sentence of up to 5 years, or 20 years if additional criminal charges are brought.

Societal attitudes and a lack of infrastructure, resources, and training for law enforcement officials hampered the implementation of domestic violence legislation, and it was difficult for women's cases to be prosecuted effectively. It was believed that the number of women who filed complaints represented only a fraction of those who suffered abuse, and doctors, police officers, and judges often treated abused women poorly. According to estimates from NGOs, one in four women were in abusive relationships.

The Government financed 25 shelters for abused women; however, there was a need for more shelters, particularly in the rural areas. The SAPS was in the process of converting all Child Protection Units (CPU) to Family Violence, Child Protection, and Sexual Offenses (FCS) Units; at year's end, there were 22 CPUs and 40 FCSs. FCS investigating officers and other police officers were trained annually in gender sensitivity. The Government conducted domestic violence awareness campaigns, such as the annual 16 Days of Activism.

Rape, including spousal rape, is illegal; however, it remained a very serious problem. According to the 2002-03 SAPS annual report, the incidence of rape decreased slightly in comparison with previous years, although it still remained extremely high due to a poor security climate and societal attitudes condoning sexual violence against women. According to Amnesty International, only 1 out of 35 rapes in the country was reported to the authorities. The 2002-03 SAPS report noted that 90 percent of rape victims were known to their rapists, 45 percent of all rapists were HIV positive, and approximately 14 percent of all victims were younger than 12 years old. Only 5 percent of all rape cases ended with a conviction, with 40 to 60 percent of cases being withdrawn; however, SAPS reported an increase in the number of sexual offense convictions to 471. Although judges in rape cases generally followed statutory sentencing guidelines, women's advocacy groups occasionally criticized judges for using questionable criteria, such as the victim's behavior or relationship to the rapist, as a basis for imposing lighter sentences.

Rape, sexual assault, and sexual harassment of black African female farm workers by farm owners, managers, and by other farm workers were common.

The Government operated 52 sexual offenses courts throughout the country, designated waiting rooms for victims, established counseling, installed more than 2,000 intermediary facilities at courts, and trained judicial officers. The SOCA established five rape care centers, known as Thuthuzela centers, which specialized in rape care management and streamlined a network of existing investigative, prosecutorial, and medical and psychological services in the hospital where it was located.

In December 2003, two adults and a minor were arraigned on homicide charges after a group of men in Khayelitcha raped Lorna Mlosana and beat her to death after they found out she was HIV/AIDS positive. In January, the accused were denied bail and they remained in detention awaiting trial at year's end.

Virginity testing occurred in KwaZulu-Natal, especially related to the Reed Dance ceremony in which only "maidens" could participate. Polygyny continued to be practiced by several ethnic groups. Exacting a bride price ("lobola") also was a traditional practice of some ethnic groups.

The law specifically prohibits female genital mutilation (FGM) as unfair discrimination, and the Commission for Gender Equality, the Study of Violence and Reconciliation, and People Opposed to Women Abuse all reported that there were no cases of FGM during the year.

Prostitution is illegal; however, it was widespread and practiced rather openly, including in a number of brothels. On October 4, seven police officers were arrested on charges of corruption and extortion for demanding sex from prostitutes in return for not arresting them.

There were reports that women were trafficked into the country for prostitution, or were trafficked to foreign territories such as China and Macao (see Section 5, Trafficking).

The law prohibits sexual harassment; however, sexual harassment remained a widespread problem. On March 18, in the Cape High Court a woman won the first case of its kind when she successfully sued her employers for failing to protect her against sexual harassment.

Discrimination against women remained a serious problem despite equal rights under family law and property law with regard to inheritance, divorce, and custody of children, and equal legal rights under the judicial system. In practice women experienced economic discrimination in areas such as wages, extension of credit, and access to land. For example, township housing transfer schemes favored existing titleholders who tended to be men. Rural areas were often administered through traditional structures that do not typically grant land tenure to women, which was a precondition for access to housing subsidies. On July 30, the Constitutional Court heard three cases fighting to repeal the law that prohibits black African women from inheriting property unless specified in a will. The SAHRC brought one of these cases as a class action suit for women and children in similar circumstances.

On October 15, in another case, the Constitutional Court ruled that the practice of allowing the eldest male descendant to inherit everything and exclude children whose parents were not married is unconstitutional and invalid. The judgment also provided a formula for calculating inheritances, including for children of unmarried parents and partners in polygynous unions.

Women, particularly black African women, typically had lower incomes and less job security than men. Most women were engaged in poorly paid domestic labor and micro enterprises, which did not provide job security or benefits.

In July, the Department of Labor (DOL) and the Commission for Employment Equity reported that in 2001 and 2002 there was a drop in representation of females at professional and middle management levels. According to the report, black females were especially less likely to hold high-level positions. Women never held more than 21 percent of top management positions and earned on average 76 percent of what their male counterparts earned. The Presidency continued its efforts towards gender equity in its offices. After the April 14 election, President Mbeki increased the number of women in the cabinet to 12 out of 28, and appointed 4 women as premiers in the country's 9 provinces.

Female farm workers often experienced discrimination and their access to housing often was dependent on their relationship to male farm workers. Many female farm workers were denied maternity leave in violation of the law or were allowed only enough time to give birth before having to return to work.

The Department of Trade and Industry provided incentive grants to promote the development of small and medium businesses and micro enterprises for women, young persons, and persons with disabilities.

A number of governmental bodies and NGOs monitored and promoted women's human rights. Numerous active women's rights groups focused on such areas as violence against women and the economic advancement of women.

Children

The Government was generally committed to children's welfare.

The law provides greater educational opportunities for disadvantaged children traditionally black African children through a uniform system for the organization, governance, and funding of schools. It mandates compulsory education from ages 7 to 15 and ensures that children cannot be refused admission to public schools due to a lack of funds. According to the 2003 Review of Public School Financing, 96 percent of 7 to 15 year olds and 88 percent of 16 to 19 year olds were enrolled in school. While in general, there were comparable attendance numbers for boys and girls, a number of factors, including unplanned pregnancies, domestic responsibilities (particularly in rural areas), and gender stereotypes contributed to high drop out rates and lower secondary school pass rates for girls.

Approximately 60 percent of nonpersonnel education resources were devoted to the 40 percent most needy schools. Each of the

nine provincial departments of education had responsibility for the schools in their provinces, which resulted in the uneven distribution of educational facilities. The disparity affected the poorer provinces of Eastern Cape, Limpopo, and KwaZulu Natal most severely. The availability and quality of primary schooling continued to be a problem, especially in rural areas where schools often were not easily accessible or where children worked (see Section 6.d.). In May, Human Rights Watch (HRW) reported that children attending farm schools, which are public schools on private commercial farms (13 percent of all state-funded schools), were among the poorest in terms of resources and were vulnerable to the farmers on whose land they occupied. Most schools in rural and urban KwaZulu Natal reportedly faced many problems of inadequate learner support materials, long vacant teaching posts, overcrowding, late pupil registration, and vacation time vandalism. To address these problems, the Government continued to build new schools and introduced basic skills development and prevocational training into the curriculum.

There continued to be reports of widespread rape, sexual abuse, sexual harassment, and assaults of girls at school by teachers, students, and other persons in the school community. The law requires schools to disclose sexual abuse to the authorities; however, administrators often concealed sexual violence or delayed disciplinary action. The level of sexual violence in schools also increased the risk for girls of contracting HIV/AIDS or other sexually transmitted diseases, as well as unwanted pregnancies. Girls were often raped on the school premises, and the victims' age generally ranged from 4 to 14. Alcohol and substance abuse by perpetrators was often a contributing factor.

Although the law prohibits corporal punishment in schools, there were reports that teachers used physical violence to discipline students. On June 1, the press reported that a student at Phezulu High School died from a brain aneurysm after being beaten by the principal for being late. The principal reportedly was suspended. The South African Council of Educators was also investigating two other reports of abuse of students by teachers. In addition, there continued to be racially motivated violence among students in schools. On April 7, the case against a white mother, her daughter, and her daughter's boyfriend for assault and defamation following a November 2003 attack on Nosipho Mkhize, a black African girl in Cape Town, was heard in the Blue Downs Equality Court, and the court ordered the mother, Shannon Ferreira, to pay \$1,538 (R10,000) to a charity of Mkhize's choice. On July 6, the charges of defamation and assault, which were brought in a civil case, were dropped and the parties reached an out of court settlement that included a public apology to Nosipho Mkhize and her family.

The Government continued to increase its social welfare programs to children affected by poverty and the loss of parents. The number of children who received child support, care dependency, and foster care grants grew from 349,000 in 2000 to approximately 3.9 million by the end of 2003. The Government progressively extended child support grants to cover children up to the age of 14.

In practice it sometimes was difficult for persons, including children, in rural areas to obtain access to health care facilities and other social welfare programs.

HIV/AIDS activists, physicians and opposition parties continued to widely criticize the Government for failing to adequately protect young children from HIV/AIDS transmission through the provision of anti retroviral (ARV) medication to pregnant and breast feeding women. Although the Government responded to a Constitutional Court finding that they must provide programs to prevent the transmission of HIV from mothers to children by expanding the number of antenatal clinics providing nevirapine to HIV positive mothers, the national and provincial governments did not implement the program in all provinces in a timely way. Significant improvements were achieved in three provinces and programs were being developed in other provinces during the year. Following research reports, the Government again raised concerns about the use of nevirapine mono-therapy for the prevention of transmission from mothers to their children and this was likely to further delay effective program implementation. The Government was unable to provide for the rapidly growing number of children who were affected by HIV/AIDS, including both infected children and AIDS orphans.

Following extensive consultations, in November 2003, the cabinet approved guidelines and a plan of action by the Department of Health to guide government implementation of anti-retroviral treatment through public health facilities. This was linked to large budget increases and President Mbeki's announcement of a target of 53,000 citizens in treatment by March 2005. Implementation of programs to reach this goal was very slow as provinces undertook facility certification and staff training.

Violence against children, including domestic violence and sexual abuse, remained widespread. While there was increased attention to the problem, a lack of coordinated and comprehensive strategies to deal with violent crimes continued to impede the delivery of needed services to young victims.

There were fewer reports of child rape during the year than in previous years; however, it remained a serious problem. Over the past few years, the country had several nationwide campaigns against violence towards women and children that may account for part of the progress. Between February 2002 and June 2003, the police reported 21,494 cases of rape of children, no including attempted rape. Observers believed that these figures represented a small percentage of the actual incidents of child rape, because most cases involved family members and were not reported. The country had a low conviction rate for rape and child abuse. The minimum sentence for rape of a child was life in prison; however, judges have the discretion to grant more lenient sentences. In a prominent case in July, a child rapist and murderer was given six life sentences.

The law prohibits virginity testing, but was not always enforced. For example, virginity testing occurred in KwaZulu-Natal, especially related to the Reed Dance ceremony in which only "maidens" could participate.

Traditional male circumcision was still prevalent in various parts of the country. Initiation practices, which included circumcisions, continued during the year; however, there were fewer reports of deaths as a result of them. The House of Traditional Leaders attempted to address the issue of unsafe initiation practices and designed strategies to prevent deaths and the spreading of diseases, such as HIV/AIDS. On March 3, the Western Cape provincial government launched an initiation village in Cape Town to ensure a clean, safe, and healthy environment to prevent deaths or serious injury for young men who undergo the initiation. The Department of Health in the Eastern Cape provided 30 vehicles during the June initiation season to monitor initiation practices and also provided mobile clinics to give medical care where needed. The private medical sector also became involved to prevent deaths. In June, a Pretoria medical clinic offered free circumcisions to 50 initiates.

In contrast with previous years, there were no reports of FGM.

Child prostitution increased during the year (see Section 5, Trafficking).

NGOs provided shelter, medical, and legal assistance for child prostitutes and a hotline for victims of child abuse. The Government donated land and buildings for various shelters for victims of sexual abuse, street children, and orphans.

Child labor was a problem (see Section 6.d.).

Trafficking in Persons

The law does not specifically prohibit trafficking in persons, and trafficking in persons was a problem. The Government worked on a comprehensive anti-trafficking bill; however, it was not passed by year's end. Despite this, the Government used a number of already existing laws to prosecute traffickers for offences, such as prostitution and sexual exploitation of children, related or integral to their trafficking activities. These laws include the Child Care Act, the Sexual Offenses Act, the Domestic Violence Act, and the Prevention of Organized Crime Act.

The law prohibits the commercial sexual exploitation of children, sexual intercourse with children under 16, and permitting a female under 16 to stay in a brothel for the purpose of prostitution. A 2003 government-established task team continued to develop a plan of action to combat the sexual exploitation of children.

The Government was prosecuting a high profile case against a prominent brothel and several child prostitution cases in Cape Town at year's end. In one case, the Court made a decision based on existing legislation including abduction. Deportations were used in cases involving trafficking in persons victims from other countries and perpetrators of major offenses were fined.

The media reported that on November 18 police rescued 14 girls between the ages of 10 and 15 from several houses in Rosettenville, Johannesburg, where a Nigerian child prostitute syndicate was holding them. As part of this operation, police reportedly arrested 59 Nigerians, 57 in Johannesburg and 2 in Durban.

Several anti-trafficking in persons conferences and an awareness campaign were organized. A police unit operated at the Johannesburg International Airport to check for potential trafficking in persons with some successes; however, there was evidence of corruption at low levels of the police, immigration customs, and private services at the airport. Police reported officers sometimes helped traffickers move victims out of the transit area of the airport for minimal amounts of money. The border police incorporated trafficking in persons into their training manuals, and both police and judicial officials continued to receive training in anti-trafficking in persons activities.

The country cooperated with neighboring countries; however, police units handling trafficking problems were understaffed and information sharing with neighbors was sometimes hindered by corruption. The country used its 52 Sexual Offenses courts to handle trafficking cases and relied heavily on NGOs to provide witness protection.

The country was a transit and destination point for the trafficking of persons, including children, from other countries in Africa, Asia, and Europe for prostitution and forced labor. Domestic and international organized crime syndicates trafficked women into the country for the sex industry. The extent of trafficking operations was not known. The International Organization for Migration (IOM) reported there were 12 major routes for trafficking operations, such as from Lesotho, China, Malawi, and Eastern Europe to the country.

Child prostitutes were often highly sought after because of the belief they were more likely to be disease-free. The NGO Molo Songololo estimated that there were approximately 30,000 children working as prostitutes in the country.

Although there was considerable variation in the profiles of trafficked persons and their traffickers, in most cases traffickers lured women with promises of employment, marriage, or educational opportunities abroad.

According to the IOM, there were several major criminal groups in the country that trafficked women: Bulgarian and Thai syndicates, the Russian and the Chinese Mafia, and African criminal organizations, mainly from the DRC. Traffickers also included male citizens and African refugees.

Trafficked women and children who worked in the sex industry often lived with other trafficked victims in segregated areas; were frequently under constant surveillance; usually had no money or identifying documents; were often indebted to the agents who arranged their travel; often worked long hours, in some cases up to 18 hours each day, on weekends, and when ill; and sometimes were fined by their trafficker for infractions of strict rules.

Persons with Disabilities

The Constitution prohibits discrimination on the basis of disability; however, in practice government and private sector discrimination in employment existed. Society increasingly was open to the protection of the rights of persons with disabilities. The law mandates access to buildings for persons with disabilities; however, such regulations rarely were enforced, and public awareness of them remained minimal. The National Environmental Accessibility Program, an NGO comprising persons with disabilities as well as service providers, had a presence in all nine provinces to lobby for compliance with the regulations and to sue offending property owners when necessary. The law provides persons with disabilities with protection from harassment and, in conjunction with the Employment Equity Act, also provides guidelines on the recruitment and selection of persons with disabilities, reasonable accommodation for persons with disabilities, and guidelines on proper handling of employee medical information; however, enforcement of this law was limited. The law also requires employers with more than 50 workers to create an affirmative action plan with provisions for achieving employment equity for persons with disabilities. It was estimated that persons with disabilities constituted only 0.02 percent of the public service workforce, compared with 5.9 percent of the general population.

In August, the Legal Resources Center filed a class action suit in the Pretoria High Court representing 50,000 citizens who were disabled by work-related accidents in the previous 11 years. They claimed the Government had reneged on its statutory obligation to provide them with their source of income.

National/Racial/Ethnic Minorities

The law prohibits discrimination and requires employers with 50 or more employees to ensure that previously disadvantaged groups, defined for legal purposes as Blacks including "Africans," "Colored," and "Asians," are represented adequately at all levels of the workforce; however, they remained underrepresented in the workforce, particularly at the professional and managerial levels. The Government continued efforts to reorganize and redesign the educational, housing, and health care systems to benefit all racial and ethnic groups in society more equally.

Notwithstanding the country's anti-discrimination legislation, the Commission for Employment Equity reported in its July 2003 annual report that racial imbalances in the workplace still existed, and that only 19 percent of positions at the top management level in 2002 were held by Blacks and approximately 31 percent of professionally qualified employees were Black. The report makes it clear that Black women by far remained the worst off in terms of the number and quality of senior or skilled jobs. Employers cited a lack of training and development, poor recruitment processes, and an antagonistic corporate culture as the main impediments to affirmative action.

There were an overwhelming number of Black workers in unskilled, low paid jobs, where they amounted to 83 percent of the workforce. In occupations such as newspaper vendors, garage attendants, car washers, gardeners, and garbage collectors, Blacks accounted for 98 percent of the workforce.

The armed forces struggled with the process of integrating black Africans into the predominantly white officer corps. In contrast to 2003, there were no reports of racism among SANDF troops in the DRC.

Xenophobia led to attacks on foreigners. Foreigners faced harsh reactions from anti immigrant groups such as the Unemployed Masses of South Africa, which criticized immigrants for job losses. The SAHRC held hearings on xenophobia from November 2 to 4 to investigate the extent of xenophobia in the country, and its human rights implications. Testimonies told how foreigners are often mistreated and discriminated against by police and the business community, and how the situation is worsened by corruption within the Department of Home Affairs and the SAPS. The SAHRC is scheduled to issue a report to Parliament, offering guidance on action to combat this problem; however, the report had not been issued by year's end.

The continued killings of mostly white farm owners by black African assailants created concern among white farmers that they were being targeted for racial and political reasons (see Section 1.a.). There also were reports that white employers abused and killed black African farm laborers, and complaints that the white employers received preferential treatment from the authorities (see Section 1.a.).

On April 13, the media reported that there was an outbreak of violence against Indian residents in Free State province.

Indigenous People

The Khoikhoi, nomadic herders of cattle and sheep, were the first indigenous people in the country, and lived mainly in the southwestern Cape. Only a few thousand Khoikhoi remained, some of whom worked as farmers or laborers on farms. Under the law the Khoikhoi have the same political and economic rights as other citizens; however, their participation was limited, due to

fewer opportunities, minimal access to education, and relative isolation.

The SAHRC conducted an inquiry into alleged human rights violations against the Khomani San community in the Andriesvale-Askham area in the Kalahari on October 26-29. The police shooting and killing of a community member, Optel Rooi, in January sparked the SAHRC hearing. The community alleged the police did not investigate the community's complaints, and that the police assaulted them physically and verbally. The community also alleged negligence by the Land Claims Commission, by not supporting them after the community received 6 farms valued at \$2.3 million (R15 million) in 1999. The SAHRC concluded the hearing. The report has not been made public, but the DPP decided to prosecute Inspector Johannes Liebenberg and Constable Wayne van Wyk for the murder of Optel Rooi.

The media reported that the Northern Cape government's land reform program resettled 500 to 1,000 San families in February from Schmidtsdrift to Platfontein in the Northern Cape. Provincial authorities also implemented a similar project in Killarney and with the Moso Emerging Crop Trust project.

Other Societal Abuses and Discrimination

There was some official and societal violence and discrimination against homosexuals. The press reported that police assaulted a homosexual man in Khayelitsha, Western Cape on June 14, and that Khayelitsha police laughed at a gay man who reported an assault. A lesbian claimed that two policemen beat and raped her on September 9 and 10 because they wanted to show her what happens to a woman "who tries to be a man." The officers claimed that she was drunk and resisted arrest. An investigation into the incident was ongoing at year's end.

Although the Government conducted campaigns to reduce or eliminate discrimination against persons with HIV/AIDS, the social stigma associated with HIV/AIDS remained a general problem. There were reports of human rights abuse of HIV infected or affected individuals by their families and communities.

Section 6 Worker Rights

a. The Right of Association

The law provides for freedom of association, and workers exercised this right in practice. All workers with the exception of members of the National Intelligence Agency (NIA) and the Secret Service, were entitled to join a union. Union membership in the private sector continued to decline steadily, as a result of job layoffs and declining formal sector employment. Total union membership was approximately 3.9 million persons, which constituted approximately 26 percent of the economically active population, with 485 registered unions.

Although labor laws protected farm workers, some farm workers' unions encountered difficulties trying to organize workers because union organizers were considered trespassers on private property. In addition, farm workers or farm residents who attempted to organize were harassed, dismissed, and evicted. The DOL and unions enlisted the cooperation of AgriSA, the national farmers' organization, to educate farmers about workers' rights and to improve working conditions. The DOL reported that 4.5 percent of the agricultural labor force was unionized.

b. The Right to Organize and Bargain Collectively

The law defines and protects the rights of workers to organize and bargain collectively and workers exercised these rights in practice.

The law provides for the right to strike, and workers exercised this right in practice. Although members of the SANDF were allowed to join a union, they were prohibited from striking. Strikes by workers in essential services, such as police and hospital workers, are prohibited. If disputes between workers in essential services and their employees cannot be resolved through collective bargaining or conciliation, they are referred to arbitration. There are no export processing zones.

c. Prohibition of Forced or Compulsory Labor

The Constitution prohibits forced or compulsory labor, including by children; however, there were reports that such practices occurred (see Sections 5 and 6.d.). According to DOL officials, there were no figures available for children subjected to compulsory labor, but there was anecdotal evidence that children of tenants were forced to work for landowners for little or no wages, in return for the child's family occupying land or accommodation (see Section 6.d.).

d. Prohibition of Child Labor and Minimum Age for Employment

Child labor is prohibited by law; however, it remained a problem in the informal sector. The Government generally enforced child labor laws in the formal sectors of the economy; however, child labor was widespread in informal and agricultural sectors, particularly in the former homeland areas. The death of parents by HIV/AIDS has increased the number of children who have to

support themselves.

The law prohibits employment of a child who is under 15 years of age; who is under the minimum school-leaving age (where the age is 15 or older); or who is over 15 but under 18, if the employment is inappropriate for the child's age, or if the work places at risk the child's well being, education, physical, or mental health, or spiritual, moral, or social development, or has been prohibited by the Minister of Labor through various regulations.

Child laborers from Zimbabwe and Mozambique worked in the country on commercial farms, for the taxi industry, or as domestic servants.

There were reports that children were forced into prostitution and anecdotal evidence that some children worked in conditions that amounted to bondage (see Section 5, Trafficking).

During the year, the DOL recruited, trained, and empowered inspectors to follow up on transgressors and enforce existing policies. Violation of the laws regulating child employment is punishable by a maximum prison sentence of 3 years or a fine of \$2,308 (R15,000). In July, a North West farmer was found guilty of 24 charges of child labor and sentenced to 2 years in jail or a fine of \$2,300 (R15,000). The farmer had employed children from surrounding villages, one as young as age 8, to harvest peanuts. DOL inspectors also were investigating a case of child labor against a Ventersdorp commercial farmer in the North West Province that involved a 13-year-old boy who was seriously injured while allegedly working on the farm.

In some cases, DOL inspectors opted to resolve the problem of child labor through counseling of employers, parents, and children or by enlisting the services of professionals in the welfare and education departments. There were also reports that inspectors had difficulty gaining access to farms where incidents of child labor were reported.

The DOL started an awareness program aimed at educating farmers about the rights of children.

e. Acceptable Conditions of Work

There was no legally mandated national minimum wage; however, the Government set minimum wages by occupation, though not all occupations had yet come under review. Annual negotiations between employers or employee associations and unions set wage rates on an industry-by-industry or plant-by-plant basis for unionized workers in the formal economy. Such negotiated wages generally were sufficient to provide a decent standard of living for a worker and family; however, in those sectors in which workers were not organized sufficiently to engage in the collective bargaining process many unskilled or rural workers were unable to provide a decent standard of living for themselves and their families.

The law gives the Minister of Labor the authority to set wages, including for farm laborers and domestic workers. In March 2003, the Minister of Labor introduced a minimum wage for farm workers and in November 2003 increased the minimum wage to \$132.60 (R861.90) a month in urban areas and to \$107.70 (R700.05) a month in rural areas. According to the DOL, compliance with the minimum wage rate ranged from 65 to 90 percent, depending on province. In March, the Minister of Labor ordered that the wages of farm workers be increased by between 9 and 10 percent annually.

Minimum hourly rates for domestics depended on the number of hours worked and could range from \$0.60 (R3.88) to \$0.80 (R5.23). The Government also extended the Unemployment Insurance Fund (UIF) benefits to vulnerable workers such as domestics and farm workers, which increased their security in the workplace. The DOL reported that the majority of domestic employers complied with the dispensation on minimum wages and conditions of work. DOL inspectors conducted home visits to check whether employers were complying with the Domestic Worker Sectoral Determination and the UIF Act.

In February, the Labor Court ordered a Durban textile firm to pay \$18,461 (R120,000) to 60 of its workers for failing to comply with sectoral minimum wages.

The law standardizes time and a half pay for overtime, establishes a 45 hour workweek, and authorizes 4 months of maternity leave for women. A ministerial determination exempted businesses employing fewer than 10 persons from certain provisions of the law concerning overtime and leave.

Occupational health and safety issues were a top priority of trade unions, especially in the mining, construction, and heavy manufacturing industries, and the country's industrial and mining processes were dangerous and sometimes deadly. The law provides for the right of mine employees to remove themselves from work deemed dangerous to health or safety. In addition, a tripartite mine health and safety council and an inspectorate of mine health and safety were responsible for enforcing the act and monitoring compliance with its provisions. The law specifically makes it an offense for a company to discriminate against an employee who asserted a right granted by the law (for example, to leave a hazardous work site) and required mine owners to file annual reports that provided statistics on health and safety incidents for each mine being worked.

Four firms in KwaZulu-Natal were inspected in a blitz action on March 29 and 30, and 17 contravention orders were issued on health and safety violations. In April, the Labor Court fined a KwaZulu-Natal firm \$4,154 (R27,000) for failure to maintain a safe working environment in 2001 following a female employee's birth of still-born twins after emergency services could not enter a

locked building.

There were no laws or regulations, other than in the mining industry, that permitted workers to remove themselves from work situations deemed dangerous to their health or safety without risking loss of employment; however, the law protects employees from retaliation who disclosed dangerous workplace conditions to the appropriate authorities.

On September 1, an explosion at a Sasol plastics plant killed 11 workers and injured 142 employees. Workers at the plant and the Congress of South African Trade Unions representatives claimed that there had been inadequate oversight of safety procedures. Sasol, the DOL, and police launched a probe into the incident.

Despite government efforts to improve the plight of farm workers, working conditions on farms generally remained poor. A 2000 DOL survey found that employment conditions in the agricultural sector were deplorable and the majority of farm workers "live in circumstances of absolute and relative poverty"; the majority of farm workers were not unionized; and they were exploited by employers. Some white farmers still gave the predominantly black farm workers cheap alcohol (a system of payment known as "tot") in lieu of wages, according to a SAHRC report released in September 2003. Farmers continued to illegally evict workers; set their dogs on their employees; there was lack of access to service delivery; lack of compliance with labor legislation; lack of information on HIV/AIDS; and unacceptable levels of violence and crime against farm workers and farm owners.

Many farmers did not accurately measure working hours, and they often required their laborers to work 11 hours per day and 6 days per week. In addition, 12 hour days were common during harvest time, and few farmers provided overtime benefits. HRW reported low wages and the absence of basic services in farm workers' housing.

Health and safety regulations often were not observed during the use of chemicals in agricultural work. An investigation continued during the year into the June 2003 death of an employee while cleaning an underground tank at a wine farm in the Western Cape.

Illegal foreign workers had no protection under the law. They often were reported to be underpaid and forced to work long hours in very poor, unsanitary, and unsafe conditions.